

CIVIL TRACKING ORDER
(STANDING ORDER 1- 88)DOCKET NUMBER
1872CV00368**Trial Court of Massachusetts
The Superior Court**

CASE NAME

Debra Foschi vs. Michael Flores, Esq. et al

Scott W. Nickerson, Clerk of Court
Barnstable County

COURT NAME & ADDRESS

Barnstable County Superior Court
3195 Main Street
Barnstable, MA 02630

TO: File Copy

TRACKING ORDER - A - Average

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION**DEADLINE**

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		10/11/2018	
Response to the complaint filed (also see MRCP 12)		11/13/2018	
All motions under MRCP 12, 19, and 20	11/10/2018	12/10/2018	01/09/2019
All motions under MRCP 15	09/06/2019	10/07/2019	10/07/2019
All discovery requests and depositions served and non-expert despositions completed	07/02/2020		
All motions under MRCP 56	08/03/2020	08/31/2020	
Final pre-trial conference held and/or firm trial date set			12/29/2020
Case shall be resolved and judgment shall issue by			07/12/2021

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to

DATE ISSUED

07/24/2018

ASSISTANT CLERK

Scott W Nickerson

PHONE

(508)375-6684

CIVIL ACTION COVER SHEET		DOCKET NUMBER	Trial Court of Massachusetts The Superior Court		eFile																					
PLAINTIFF(S): Debra Foschi, Pro Se		1872CV368		<div style="border: 1px solid black; padding: 5px; display: inline-block;">COUNTY: Barnstable SUPERIOR COURT BARNSTABLE, SS FILED: JUL 13 2018 <i>Scott L. McKee</i> Clerk Michael Flores 28 Kenrick Rd, Orleans, MA 02653</div>																						
ADDRESS: 22 Crosby Circle, Osterville, MA 02655		DEFENDANT(S): Michael Flores Megan English Braga																								
ATTORNEY: N/A		ADDRESS: Michael Flores 28 Kenrick Rd, Orleans, MA 02653 Megan English Braga, 12 Brady Dr., East Falmouth, MA 02536																								
ADDRESS:																										
TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)																										
CODE NO. B07	TYPE OF ACTION (specify) Legal Malpractice	TRACK A	HAS A JURY CLAIM BEEN MADE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																							
Other" please describe:																										
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A																										
<p>The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.</p> <p style="text-align: center;">TORT CLAIMS (attach additional sheets as necessary)</p> <p>A. Documented medical expenses to date:</p> <table style="width:100%;"><tr><td>1. Total hospital expenses</td><td style="text-align: right;">\$</td><td style="text-align: right;">NA</td></tr><tr><td>2. Total doctor expenses</td><td style="text-align: right;">\$</td><td style="text-align: right;"></td></tr><tr><td>3. Total chiropractic expenses</td><td style="text-align: right;">\$</td><td style="text-align: right;"></td></tr><tr><td>4. Total physical therapy expenses</td><td style="text-align: right;">\$</td><td style="text-align: right;"></td></tr><tr><td>5. Total other expenses (describe below)</td><td style="text-align: right;">\$</td><td style="text-align: right;"></td></tr><tr><td colspan="2" style="text-align: right;">Subtotal (A):</td><td style="text-align: right;">\$</td></tr></table> <p>B. Documented lost wages and compensation to date</p> <p>C. Documented property damages to date</p> <p>D. Reasonably anticipated future medical and hospital expenses</p> <p>E. Reasonably anticipated lost wages</p> <p>F. Other documented items of damages (describe below)</p> <p>G. Damages in underlying divorce case as a result of defendants' negligence.</p> <p>H. Briefly describe plaintiff's injury, including the nature and extent of injury: Defendants' negligence caused Plaintiff to receive an divorce judgment that included assets worth \$550,000 less than assets awarded to her ex-husband.</p> <table style="width:100%;"><tr><td style="text-align: right;">TOTAL (A-F):</td><td style="text-align: right;">\$</td><td style="text-align: right;">\$550,000+</td></tr></table> <p style="text-align: center;">CONTRACT CLAIMS (attach additional sheets as necessary)</p> <p>I. Provide a detailed description of claims(s):</p> <p style="text-align: right;">TOTAL: \$</p> <p>Signature of Attorney/Pro Se Plaintiff: X Date: 7/13/18</p> <p>RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.</p> <p style="text-align: center;">CERTIFICATION PURSUANT TO SJC RULE 1:18</p> <p>I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.</p> <p>Signature of Attorney of Record: X Date:</p>						1. Total hospital expenses	\$	NA	2. Total doctor expenses	\$		3. Total chiropractic expenses	\$		4. Total physical therapy expenses	\$		5. Total other expenses (describe below)	\$		Subtotal (A):		\$	TOTAL (A-F):	\$	\$550,000+
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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

DEBRA FOSCHI,
Plaintiff,

v.

MICHAEL FLORES, and
MEGAN ENGLISH BRAGA
Defendants.



BARNSTABLE SUPERIOR COURT

1872CV368

1. Plaintiff DEBRA FOSCHI ("Ms. Foschi" or "Plaintiff") is an individual who resides at 22 Crosby Circle, Osterville, Massachusetts, County of Barnstable, Commonwealth of Massachusetts.
2. Defendant MICHAEL FLORES ("Flores") is an individual licensed to practice law in the Commonwealth of Massachusetts with a principal place of business located at 12 Main Street, PO Box 1056, Orleans, Massachusetts. Flores resides in Orleans, Massachusetts.
3. Defendant MEGAN ENGLISH BRAGA ("Braga") is an individual licensed to practice law in the Commonwealth of Massachusetts with a principal place of business located at 157 Locust Street, Falmouth, Massachusetts. Braga resides in East Falmouth, Massachusetts.
4. Flores and Braga are hereinafter referred to collectively as "defendants".
5. On or about May 13, 2013, Ms. Foschi's now ex-husband, Thomas Walko ("Walko"), filed a complaint for divorce against Ms. Foschi in the Barnstable Probate and Family Court, Case No. BA13D0341DR (the "Divorce Case"), based on an irretrievable breakdown.
6. Initially, Ms. Foschi was represented by Attorney Paul G. Farrell.
7. On October 2, 2013, Flores filed an appearance on behalf of Ms. Foschi in the Divorce Case and later that same month, Attorney Farrell withdrew from the case.
8. The issues in dispute in the Divorce Case included the disposition of the parties' real property, tangible/personal property, and custody/visitation of their children.

9. At the time Walko filed for divorce, the parties jointly owned several pieces of real property in Massachusetts and a chiropractic practice. Ms. Foschi also owned a 16% interest in an office building located in Flushing, NY.
10. The court conducted a pretrial conference on May 7, 2014, pursuant to which it issued a Pre-Trial Order. Among other things, the Pre-Trial order provided that all discovery was to be completed no later than October 6, 2014 and that the parties "shall exchange final witness lists by September 22, 2014."
11. The Pre-Trial Order further states that by independent agreement of the parties, all issues relative to their joint ownership of their chiropractic business, Walko Chiropractic and Nutrition (the "Business"), shall be resolved by binding arbitration. As such, division/sale of the Business between the parties was never at issue in the Divorce Case and was to be litigated in through binding arbitration only.
12. Sometime in 2014, Walko disclosed Clancy Appraisals as an expert on the value of the parties' real property in Massachusetts and disclosed the actual appraisals done by Clancy Appraisals.
13. Pursuant to a motion to continue trial filed by Flores in October 2014, the court continued the trial to February 2-3, 2015, set the last day for discovery as December 29, 2014 and the last day to exchange final witness lists as December 15, 2014.
14. Sometime in October 2014, Walko disclosed Malcom Newman, a licensed real estate broker in New York, as his expert on the valuation of Kissena Hall, 64-19 Kissena Blvd, Flushing, NY 11367 ("Kissena Hall") in which Ms. Foschi owned a 16% interest, only a small percentage received during the marriage; the other percentage was gifted to her prior to the marriage by her parents for her own use.
15. Sometime in December 2014, Walko served another "expert" report on Ms. Foschi. The report, which was prepared by chiropractor Mark Davini, set forth his opinion as to the value of the Business. Davini's report does not set forth any description of the qualifications allowing him to make an expert opinion on the valuation of *any* business or any accepted methodology for making the valuation. The Davini report valued the Business at \$79,817 even though Business had **net income of \$220,481** in 2013.
16. On or about January 20, 2015, Walko served an "expert" report (the "Newman Report") on Ms. Foschi regarding Newman's appraisal of Ms. Foschi's interest in Kissina Hall. The Newman Report contended that the value of Ms. Foschi's interest in Kissina Hall was \$688,660.00 – a gross overstatement in value.
17. On information and belief, in late December 2014, Flores served expert appraisals prepared by Linda Coneen, a real estate appraiser. Ms. Coneen's appraisals set the value of the parties' Massachusetts real property as follows:

- a. 22 Crosby Circle, Osterville, MA: \$540,000.00
 - b. 73 Davis Straits, Falmouth, MA (location of the Business): \$350,000.00
 - c. 69 Davis Straits, Falmouth, MA: \$385,000.00
 - d. 63 Davis Straits, Falmouth, MA: \$340,000.00
18. Flores never retained or disclosed any expert on behalf of Ms. Foschi with regard to valuation of the Business and never provided Walko with any expert report on valuation of the Business.
 19. Flores never retained or disclosed any expert on behalf of Ms. Foschi with regard to the value of Kissena Hall and never provided Walko with any expert report on valuation of Kissena Hall.
 20. Flores apparently never updated or supplemented Ms. Foschi's responses to expert interrogatories to disclose *any* experts prior to the December 29, 2014 close of discovery.
 21. Finally, on or about January 9, 2015 – 25 days *after* the final day for exchanging final witness lists – Flores served an Amended Witness List on Walko, which for the first time listed an unnamed "Business valuation expert (WCP Partnership)" and 11 additional previously undisclosed witnesses.
 22. Given Flores' failure to answer expert interrogatories and/or timely serve Ms. Foschi's amended witness list, Walko filed a motion in limine on January 16, 2015 seeking to exclude Ms. Foschi's Business valuation expert and the 11 previously undisclosed witnesses. The docket reflects that Flores did not file any opposition to Walko's motion and thus the motion was allowed on January 16, 2015.
 23. Ms. Foschi did not learn of Walko's motion in limine and/or the court's order allowing the motion until sometime in 2017 when she went to the court to review and copy her entire file.
 24. On January 15, 2015, Flores filed a motion to withdraw as Ms. Foschi's attorney because he told Ms. Foschi that if she were to report Mr. Walko to the Chiropractic Board he would no longer represent her. After Ms. Foschi requested from Flores' secretary, Sandy, the sworn testimony of the woman patient sexually assaulted by Mr. Walko and the sworn testimony of the other woman patient he was having an affair with, Mr. Flores said that he would no longer represent Ms. Foschi. The reasons he offered was that because Judge Robert Scandurra would not like it because it hit too close to home because Judge Scandurra was having an affair with Register of Probate Anastasia Welsch Perrino. And, that motion was allowed on or about February 5, 2015. Thus, Ms. Foschi was *pro se* after February 5, 2015 until April 30, 2015, when Attorney Megan English Braga entered an appearance for Ms. Foschi.
 25. On May 5, 2015, Roger Winsby, President of Axiom Valuation, whom Ms. Foschi retained to review and analyze the Walko's Davini/TOP Education report on valuation of

the Business, provided his review of the Davini appraisal (the "Axiom Report") and determined that Davini made critical errors in its appraisal and that the value of \$79,817.00 could not be justified and should be disregarded at trial. Ms. Foschi promptly provided the Axiom Report to Braga but she does not know if Braga ever provided the report to Walko.

26. After Braga entered her appearance, on May 8, 2015, the parties filed a joint motion to continue the trial to for at least 30 days to allow them time to reach agreement on the value of the Business given that they had already stipulated to the values of all real estate except for 73 Davis Street (location of the Business) and the value of Ms. Foschi's interest in Kissena Hall.
27. The parties filed a stipulation the same day stating that all issues would be submitted to the court for decision at trial, including valuation of the business, unless they were able to agree upon the value of the Business within 30 days.
28. That same day, the court issued Further Orders setting the case for trial on July 13, 2015 and stating that if the parties were not able to reach agreement on the value of the Business by June 4, 2015, all issues would be submitted to the court at trial.
29. On May 22, 2015 and pursuant to Ms. Foschi's request, Certified Public Accountant Robert Rich provided Ms. Foschi with: (1) valuation of the Business at \$394,372.00 and appraisal of Ms. Foschi's interest in Kissena Hall at \$450,162.00. Rich's reports setting forth his valuation of the Business and appraisal of Ms. Foschi's interest in Kissena Hall are hereinafter referred to as the Rich Reports.
30. Thus, Rich's valuation of the Business was \$314,555 *higher* than the valuation performed by Walko's "expert", Davini. And Rich's appraisal of Ms. Foschi's interest in Kissena Hall was \$238,498.00 *lower* than Walko's "expert" Newman. And, Newman was considering 100% of the shares, even those received by Ms. Foschi prior to the marriage.
31. Ms. Foschi provided the Rich Reports to Braga so that she could provide them to Walko and the parties could commence negotiations on the value of the Business pursuant to the Court's May 8, 2015 Further Orders.
32. Braga did not serve Walko with an amended witness list adding Rich as an expert witness on the valuation of the Business or Ms. Foschi's interest in Kissena Hall nor did she seek to supplement the proposed exhibits for trial with the Rich Reports.
33. Likewise, it does not appear that Braga served Walko with an amended witness list adding Winsby as an expert witness on the valuation of the Business nor did she seek to supplement the proposed exhibits for trial with the Axiom Report.

34. Ms. Foschi and Walko were apparently unable to reach agreement regarding the value of the Business and/or Ms. Foschi's interest in Kissena Hall prior the court's June 4, 2015 deadline.
35. Leading up to the July 13, 2015 trial date, Walko's attorney circulated a suggested statement of uncontested facts to Braga. Braga apparently agreed to a version of the uncontested facts without Ms. Foschi's agreement and while promising to Ms. Foschi that the uncontested facts would and could be revised to be consistent with the parties' conflicting expert valuations for Kissina Hall and the Business.
36. The parties appeared for trial on July 13, 2015 with counsel. Notably, prior to trial Braga had failed to: (1) update Ms. Foschi's witness list to add Rich and/or Winsby as experts; (2) add the Rich Reports and Axiom Report as trial exhibits; or (3) insert the opinions, valuations, and appraisals set forth in the Rich Reports and Axiom Report into the uncontested statement of facts. As a result, and unbeknownst to Ms. Foschi, Ms. Foschi's ability to put on expert testimony regarding the valuation of the Business and/or value of Kessina Hall was jeopardized by Braga's inaction.
37. In contrast, Walko's attorney had ensured that the dubious "expert" reports of Davini (valuation of the Business) and Newman (appraisal of Kissena Hall") were trial exhibits and referenced in the uncontested statement of facts.
38. When the parties appeared on July 13, 2015 for trial, the court apparently encouraged the parties to submit all property division/support/alimony questions to Arbitrator/Attorney Susan Huettner in private arbitration.
39. Under pressure from Braga and counsel for Walko, Ms. Foschi was told that the Judge said that she had to go to Binding Arbitration due to tax implications. Ms. Foschi vehemently opposed that notion but was assured by all present: Braga, Taylor, and Walko that she must sign "or else". Hence, Ms. Foschi reluctantly agreed to submit the property division/support/alimony/issues to arbitration with Huettner. Braga did not explain to Foschi that it was extremely unusual to submit a divorce trial to binding arbitration.
40. Moreover, on July 13, 2015, Braga did not explain to Ms. Foschi that: (1) the documentary exhibits to be considered by Attorney Huettner *did not* include the Rich Reports or the Axiom Report; or (2) that the uncontested statement of facts – largely drafted by Walko's attorney – would be binding on the parties at arbitration and could not be changed.
41. The parties proceeded to binding arbitration with Attorney Huettner and based on Braga's representations, Ms. Foschi believed that she would be receiving a full and fair arbitration during which Huettner would consider the Rich Reports and Axiom Report and a fair decision would be rendered regarding division of the parties' property.

42. However, at arbitration, the only "expert" valuation that Huettner considered regarding the Business was the flawed lowball valuation by Davini, which valued the business at only \$79,817 – \$314,555 lower than the valuation performed by Ms. Foschi's expert, Rich.
43. And the only "expert" appraisal that Huettner considered regarding the value of Ms. Foschi's interest in Kessina Hall was the flawed and inflated valuation by Newman, which valued it at \$688,660 – \$238,498.00 higher than Ms. Foschi's expert, Rich.
44. Noting the absence of any expert opinions in support of Ms. Foschi's valuations for the Business and her interest in Kessina Hall, Huettner accepted the valuations from Walko's experts and determined that the value of the Business was only \$79,817 and value of Ms. Foschi's interest in Kessina Hall was an inflated \$688,660.
45. In attempting to divide the parties' property evenly, Huettner determined that Walko should retain the Business and Ms. Foschi should retain her interest in Kessina Hall.
46. Thus, the lowball valuation of the Business and inflated value of Kessina Hall, which Huettner accepted based only on Walko's specious "expert" opinions, had a substantial negative impact on the value of the assets Ms. Foschi received in Huettner's arbitration decision.
47. Specifically, Walko was credited as retaining the Business at a value of only \$79,817 when in fact the true value of the Business was in fact approximately \$394,372, and Ms. Foschi was credited as retaining her interest in Kessina Hall at a value of \$688,660 when in fact the true value was far, far lower.
48. Thus, because Huettner accepted the opinions of Walko's "experts" and did not have the opportunity to consider the opinions of Ms. Foschi's experts – a direct result of Braga's and Flores' combined negligence – Walko received assets worth approximately \$550,000 more than the assets received by Ms. Foschi even though Ms. Foschi was the primary marital provider and singlehandedly purchased the investment properties with her shares.
49. In sum, Huettner issued an arbitration decision, which the court accepted as judgment in the Divorce Case resulting in Ms. Foschi receiving assets worth approximately \$550,000 less than the assets received by Walko – a direct and proximate result of Braga and Flores' combined negligence and a much grander departure from prior offers by Mr. Walko.

COUNT ONE – LEGAL MALPRACTICE/NEGLIGENCE
[Ms. Foschi v. Michael Flores]

50. Plaintiff incorporates paragraphs 1 through 49 by reference as if set forth fully herein.

1. Flores held himself out to be an attorney skilled in litigating family law cases, including but not limited to difficult, contentious divorce cases involving the division of assets such as the Divorce Case.
2. Flores owed Ms. Foschi a duty of care in his representation of her in the Divorce Case, including the degree of care and skill of the average qualified practitioner.
3. Flores breached the duty of care owed to Ms. Foschi and committed professional malpractice by failing to timely retain and disclose expert witnesses with regard to the value of the Business and Ms. Foschi's interest in Kessina Hall.
4. Flores breached the duty of care by failing to ensure that: (1) expert reports for Ms. Foschi were trial exhibits; and (2) opinions, valuations, and appraisals for the Business and Kessina Hall were incorporated into the parties' statement of uncontested facts.
5. As a direct and proximate result of Flores' negligence, Ms. Foschi was unable to present expert testimony, opinions, and/or evidence of the true value of the Business and her interest in Kessina Hall in the Divorce Case and associated arbitration.
6. Ms. Foschi did not know of Flores' negligence and
7. As a direct and proximate result of Flores' negligence, Ms. Foschi received assets in the Divorce Case at least \$550,000 less than the assets received by Walko.
- 8.
9. WHEREFORE, Ms. Foschi has suffered damages as a result of Flores' negligence and demands judgment against Flores in an amount to be proven at trial, plus interest, costs, and whatever further relief the Court deems just and reasonable.

COUNT TWO – LEGAL MALPRACTICE/NEGLIGENCE

[Ms. Foschi v. Megan English Braga]

10. Plaintiff incorporates paragraphs 1 through 58 by reference as if set forth fully herein.
11. Braga held herself out to be an attorney skilled in litigating family law cases, including but not limited to difficult, contentious divorce cases involving the division of assets such as the Divorce Case.
12. Braga owed Ms. Foschi a duty of care in his representation of her in the Divorce Case, including the degree of care and skill of the average qualified practitioner.
13. Braga breached the duty of care owed to Ms. Foschi and committed professional malpractice by failing to timely retain and disclose expert witnesses with regard to the value of the Business and Ms. Foschi's interest in Kessina Hall.

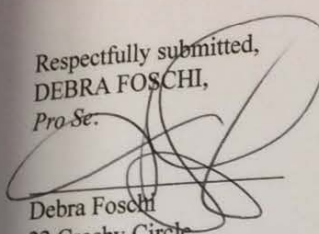
64. Braga breached the duty of care by failing to ensure that: (1) expert reports for Ms. Foschi were trial exhibits; and (2) the opinions, valuations, and appraisals set forth in the Rich Reports and Axiom Report were incorporated into the parties' statement of uncontested facts.
65. As a direct and proximate result of Flores' negligence, Ms. Foschi was unable to present expert testimony, opinions, and/or evidence of the true value of the Business and her interest in Kessina Hall in the Divorce Case and associated arbitration.
66. Ms. Foschi did not know of Braga's negligence until sometime on or after Huettner issued her arbitration decision on or about February 29, 2016.
67. As a direct and proximate result of Braga's negligence, Ms. Foschi received assets in the Divorce Case at least \$550,000 less than the assets received by Walko.
68. WHEREFORE, Ms. Foschi has suffered damages as a result of Flores' negligence and demands judgment against Flores in an amount to be proven at trial, plus interest, costs, and whatever further relief the Court deems just and reasonable.

JURY DEMAND

The Plaintiff hereby demands that all counts triable by jury be tried by a jury.

Dated: July 13, 2018

Respectfully submitted,
DEBRA FOSCHI,
Pro-Se.



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Prepared with the assistance of counsel.